

# BULLETIN

October 1993, No. 4

## COURT ADOPTS NEW CODE

Earlier this summer, the Arizona Supreme Court approved a new Code of Judicial Conduct governing all state and local judges. The new code became effective on September 1, and Arizona is now one of 16 states that have adopted new codes based on the American Bar Association's 1990 Model Code of Judicial Conduct. So far, Arizona, Arkansas, California, Georgia, Hawaii, Illinois, Indiana, Maine, Maryland, Michigan, Nebraska, Nevada, Rhode Island, South Dakota, Texas, West Virginia, and the U.S. Judicial Conference have revised all or parts of their codes after reviewing the model code.

There are numerous changes in the code, and only the first canon was left essentially untouched by the drafters. Canon 1 is the same in both codes except for commentary that was added in the new version to emphasize the importance of maintaining public confidence in the impartiality of the judiciary. The commentary also points out that judicial decisions or administrative acts that are later found to be incorrect are not violations of the Code of Judicial Conduct.

In contrast to Canon 1, there are many changes in the other canons that judges will want to study carefully. Although most of the changes are in Canons 3 and 4, Canon 2 contains a major new section warning judges to avoid memberships in organizations that practice discrimination. And while Canon 5 may look different, the text is very similar to the previous code because the drafters decided to stay with the well-established rules and practices governing the political activities of judges in this state. The same is true for the application section, except for new language pertaining to part-time pro tempore judges.

The new code was presented to the judiciary during a special plenary session at the annual judicial conference. Copies of the code were distributed to judges at the beginning of the session as an insert to the judicial ethics manual. Several replacement pages containing minor changes to the code and a correlation table for the 1985 and 1993 codes, will be sent to all judges with this issue of the *Bulletin*. Judges who did not attend the conference and other court staff can obtain copies of the new code and the correlation table by calling the Commission on Judicial Conduct.

## COMMITTEE PROPOSES CHANGES IN RULE 82

Acting on a petition filed by the Judicial Ethics Advisory Committee, the Supreme Court issued an emergency order on September 28 changing the way advisory opinions are distributed to judges. The Advisory Committee is seeking to improve the way opinions are distributed, and the petition to change Rule 82 of the Rules of the Supreme Court is the first step in this process. The changes recommended by the committee affect the operation of the committee and the procedures for preparing and distributing advisory opinions.

### Proposed Changes

Under the old rule, the committee would send an advance copy of a written opinion to the person requesting the opinion and a few key judges, clerks and administrators as soon as the opinion was approved. The committee would distribute copies to the rest of the judiciary when enough opinions had accumulated to justify the cost of mailing them to all judges.

Starting this month, the Advisory Committee will initially distribute an advance copy of a new opinion to the requester, the chief justice, the chief judges of the court of appeals, the presiding judges of the superior court and the director of the Administrative Office of the Courts on the date the opinion is issued.

If an opinion deals with a topic of immediate concern to any particular court, a chief or presiding judge can quickly circulate copies to the judges who need the information. The Advisory Committee will distribute the full text of new opinions to all judges quarterly.

The new rule clarifies the procedure for issuing informal or unpublished advisory opinions. It also extends the deadline for reconsidering an opinion. Judges will have 30 days after an opinion is issued in which to file a petition with the committee for reconsideration of an opinion.

### Deadline for Comments

The deadline for commenting on the proposed amendment to rule 82 is December 31. A copy of the petition can be obtained from the clerk of the Supreme Court or by calling the committee's office.

## Is Your Ethics Manual Up to Date?

The Commission on Judicial Conduct and the Judicial Ethics Advisory Committee published the first edition of **Judicial Conduct and Ethics: A Reference Manual for Arizona Judges** in January, 1992. The most recent update for the manual was published in March, 1993, and that revision contained all of the advisory opinions issued in 1992 along with a comprehensive index for the opinions.

The loose-leaf manual was widely distributed and all judges and full-time court commissioners should have copies by now. Judges in newly created courts or new court divisions without manuals should contact the commission's staff immediately. The manuals belong to the courts. Judges who retire or resign should not keep the manuals when they leave the bench.

## New Advisory Opinions

The Judicial Ethics Advisory Committee has issued four opinions since the first of the year. The issues addressed in the new opinions are summarized below. Copies of the full opinions were mailed to all judges with this Bulletin.

### Opinion 93-1

Although prohibited from soliciting funds for religious organizations, a judge may serve in a position of authority in a religious organization or play a prominent role in a religious ceremony or service. Issued: February 12, 1993.

### Opinion 93-2

A state court judge may serve, without compensation, as a visiting trial judge or appellate judge on an Indian tribal court. Issued: March 16, 1993.

### Opinion 93-3

A lawyer serving as a pro tempore court of appeals judge is disqualified from judging an appeal in which one of the appellate litigants is an adverse party in other pending matters being handled by the pro tempore judge in his or her law practice. Issued: September 2, 1993.

### Opinion 93-4

Upon appointment or election to a judicial office, an elected tribal official must resign from his or her executive office. There is no grace period to complete a term of office. Issued: September 2, 1993.

## Opinion 92-13 Reissued

Late last year, the Judicial Ethics Advisory Committee issued an opinion suggesting that court employees who run for public office should resign from their positions and that persons seeking employment with a court should resign from their elected public offices before accepting employment with the court. The opinion generated considerable interest, and the committee received several petitions to reconsider the opinion. Judges in small communities in the more rural parts of the state expressed concern about how the opinion might affect court employees who already held elected positions as mayors and members of town councils or school boards.

The Advisory Committee reissued the opinion last month in a slightly modified form that reaffirmed the broad principles discussed in the original. The committee concluded that as a general rule court employees who work closely with judges should not hold political offices. It also acknowledged that the Code of Judicial Conduct does not always provide definitive answers to the types of questions raised in the opinion.

The committee recently received another request for an opinion dealing with similar issues. Judges reviewing the status of employees elected to public office may want to wait for the new opinion before taking action. Judges or court administrators with questions related to Opinion 92-13 may want to contact the committee directly to discuss specific issues.

## Membership Changes

Several changes occurred over the summer in the two organizations involved with judicial ethics. In May, **Christopher Skelly**, an attorney member of the **Commission on Judicial Conduct**, was appointed to the superior court of Maricopa County, automatically triggering the search for a replacement to fill his unexpired term on the commission. After recruiting over the summer, the Arizona State Bar's board of governors appointed Phoenix attorney **Gerald Strick**, a former superior court judge, to fill the position at its meeting in September.

Municipal Court **Judge Roxanne Song Ong** was appointed in August to succeed Judge Laura Billings on the **Judicial Ethics Advisory Committee**. Judge Billings, who filled the municipal court position on the committee, was not reappointed to the bench when her contract expired in June. **Judge Allen Minker**, presiding judge of the superior court in Greenlee County and a former member of the Commission on Judicial Conduct, was appointed to a full two-year

term on the committee after completing Judge Alice Truman's term. Judge Truman retired from the bench last year.

*What About...*

## **The Commission on Judicial Conduct**

The Commission on Judicial Conduct was created in 1970 when the electorate approved the addition of Article 6.1 to the Arizona Constitution. Voters amended the article in the 1988 election and changed the commission's name to its present form. The commission has eleven members: two are attorneys appointed by the state bar; three are public members appointed by the governor; and six are judges appointed by the supreme court.

All state and local judges fall under the commission's jurisdiction. Although its rules must be approved by the supreme court, the commission operates as an independent state agency and has its own full-time staff. Most of the complaints filed against judges are resolved informally and privately. Complaints involving more serious misconduct are considered in formal proceedings that are open to the public. Recommendations for public discipline are filed with the supreme court.

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The *Bulletin* is published periodically by the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee as a service to the Arizona Judiciary. For more information write the commission or committee staff at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007; or call (602) 542-5200.

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